

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

AMENDMENTS TO LB 13

1 1. Strike original sections 26 and 29 and insert the
2 following new sections:

3 "Section 1. Section 48-106, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 48-106. (1) The Nebraska Workers' Compensation Act shall
6 apply to the State of Nebraska, to every governmental agency
7 created by the state, and, except as provided in this section, to
8 every resident employer in this state and nonresident employer
9 performing work in this state who employs one or more employees in
10 the regular trade, business, profession, or vocation of such
11 employer.

12 (2) The act shall not apply to:

13 (a) A railroad company engaged in interstate or foreign
14 commerce;

15 (b) Service performed by a worker who is a household
16 domestic servant in a private residence;

17 (c) Service performed by a worker when performed for an
18 employer who is engaged in an agricultural operation and employs
19 only related employees; ~~and~~

20 (d) Service performed by a worker when performed for an
21 employer who is engaged in an agricultural operation and employs
22 unrelated employees unless such service is performed for an
23 employer who during any calendar year employs ten or more
24 unrelated, full-time employees, whether in one or more locations,

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 on each working day for thirteen calendar weeks, whether or not
2 such weeks are consecutive. The act shall apply to an employer
3 thirty days after the thirteenth such week; and

4 (e) Service performed by a person who is engaged in an
5 agricultural operation, or performed by his or her related
6 employees, when the service performed is (i) occasional and (ii)
7 for another person who is engaged in an agricultural operation who
8 has provided or will provide reciprocal or similar service.

9 (3) If the employer is the state or any governmental
10 agency created by the state, the exemption from the act under
11 subdivision (2)(d) of this section does not apply.

12 (4) If the act applies to an employer because the
13 employer meets the requirements of subdivision (2)(d) of this
14 section, all unrelated employees shall be covered under the act and
15 such employees' wages shall be considered for premium purposes.

16 (5) If an employer to whom the act applies because the
17 employer meets the requirements of subdivision (2)(d) of this
18 section subsequently does not employ ten or more unrelated,
19 full-time employees, such employer shall continue to provide
20 workers' compensation insurance coverage for the employees for the
21 remainder of the calendar year and for the next full calendar year.
22 When the required coverage period has expired, such employer may
23 elect to return to exempt status by (a) posting, continuously in a
24 conspicuous place at the employment locations of the employees for
25 a period of at least ninety days, a written or printed notice
26 stating that the employer will no longer carry workers'
27 compensation insurance for the employees and the date such

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 insurance will cease and (b) thereafter no longer carrying a policy
2 of workers' compensation insurance. Failure to provide notice in
3 accordance with this subsection voids an employer's attempt to
4 return to exempt status.

5 (6) An employer who is exempt from the act under
6 subsection (2) of this section may elect to bring the employees of
7 such employer under the act. Such election is made by the employer
8 obtaining a policy of workers' compensation insurance covering such
9 employees. Such policy shall be obtained from a corporation,
10 association, or organization authorized and licensed to transact
11 the business of workers' compensation insurance in this state. If
12 such an exempt employer procures a policy of workers' compensation
13 insurance which is in full force and effect at the time of an
14 accident to an employee of such employer, such procurement is
15 conclusive proof of the employer's and employee's election to be
16 bound by the act. Such an exempt employer who has procured a
17 policy of workers' compensation insurance may elect to return to
18 exempt status by (a) posting, continuously in a conspicuous place
19 at the employment locations of the employees for a period of at
20 least ninety days, a written or printed notice stating that the
21 employer will no longer carry workers' compensation insurance for
22 the employees and the date such insurance will cease and (b)
23 thereafter no longer carrying a policy of workers' compensation
24 insurance. Failure to provide notice in accordance with this
25 subsection voids an employer's attempt to return to exempt status.

26 (7) Every employer exempted under subdivision ~~(2)(e)~~ ~~or~~
27 (2)(d) of this section who does not elect to provide workers'

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 compensation insurance under subsection (6) of this section shall
2 give all unrelated employees at the time of hiring the following
3 written notice which shall be signed by the unrelated employee and
4 retained by the employer: "In this employment you will not be
5 covered by the Nebraska Workers' Compensation Act and you will not
6 be compensated under the act if you are injured on the job or
7 suffer an occupational disease. You should plan accordingly."
8 Failure to provide the notice required by this subsection subjects
9 an employer to liability under and inclusion in the act for all
10 unrelated employees on the basis of failure to give such notice.

11 (8) An exclusion from coverage in any health, accident,
12 or other insurance policy covering a person employed by an employer
13 who is exempt from the act under this section which provides that
14 coverage under the health, accident, or other insurance policy does
15 not apply if such person is entitled to workers' compensation
16 coverage is void as to such person if such employer has not elected
17 to bring the employees of such employer within the act as provided
18 in subsection (6) of this section.

19 (9) For purposes of this section:

20 (a) Agricultural operation means (i) the cultivation of
21 land for the production of agricultural crops, fruit, or other
22 horticultural products or (ii) the ownership, keeping, or feeding
23 of animals for the production of livestock or livestock products;

24 (b) Full-time employee means a person who is employed to
25 work one-half or more of the regularly scheduled hours during each
26 pay period; and

27 (c) Related employee means a spouse of an employer and an

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 employee related to the employer within the third degree by blood
2 or marriage. Relationship by blood or marriage within the third
3 degree includes parents, grandparents, great grandparents,
4 children, grandchildren, great grandchildren, brothers, sisters,
5 uncles, aunts, nephews, nieces, and spouses of the same. If the
6 employer is a partnership, limited liability company, or
7 corporation in which all of the partners, members, or shareholders
8 are related within the third degree by blood or marriage, then
9 related employee means any employee related to any such partner,
10 member, or shareholder within the third degree by blood or
11 marriage.

12 Sec. 3. Section 48-120.02, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 48-120.02. (1) Any person or entity may make written
15 application to the Nebraska Workers' Compensation Court to have a
16 plan certified that provides management of quality treatment to
17 injured employees for injuries and diseases compensable under the
18 Nebraska Workers' Compensation Act. Any such person or entity
19 having a relationship with a workers' compensation insurer or any
20 such person or entity having a relationship with an employer for
21 which a plan is being proposed for its own employees shall make
22 full disclosure of such relationship to the compensation court
23 under rules and regulations to be adopted and promulgated by the
24 compensation court. Each application for certification shall be
25 accompanied by a reasonable fee prescribed by the compensation
26 court. A plan may be certified to provide services in a limited
27 geographic area. A certificate is valid for the period the

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 compensation court prescribes unless earlier revoked or suspended
2 pursuant to subsection (4) or (5) of this section. Application for
3 certification shall be made in the form and manner and shall set
4 forth information regarding the proposed plan for providing
5 services as the compensation court may prescribe. The information
6 shall include, but not be limited to:

7 (a) A list of the names of all providers of medical,
8 surgical, and hospital services under the managed care plan,
9 together with a statement that all licensing, certification, or
10 registration requirements for the providers are current and in good
11 standing in this state or the state in which the provider is
12 practicing; and

13 (b) A description of the places and manner of providing
14 services under the plan.

15 (2) The compensation court shall certify a managed care
16 plan if the compensation court finds that the plan:

17 (a) Proposes to provide quality services that meet
18 uniform treatment standards which may be prescribed by the
19 compensation court and all medical, surgical, and hospital services
20 that may be required by the Nebraska Workers' Compensation Act in a
21 manner that is timely, effective, and convenient for the employee;

22 (b) Is reasonably geographically convenient to employees
23 it serves;

24 (c) Provides appropriate financial incentives to reduce
25 service costs and utilization without sacrificing the quality of
26 service;

27 (d) Provides adequate methods of peer review, utilization

1 review, and dispute resolution to prevent inappropriate, excessive,
2 or not medically necessary treatment and excludes participation in
3 the plan by those individuals who violate treatment standards;

4 (e) Provides a procedure for the resolution of medical
5 disputes;

6 (f) Provides aggressive case management for injured
7 employees and provides a program for early return to work and
8 cooperative efforts by the employees, the employer, and the managed
9 care plan to promote workplace health and safety consultative and
10 other services;

11 (g) Provides a timely and accurate method of reporting to
12 the compensation court necessary information regarding medical,
13 surgical, and hospital service cost and utilization to enable the
14 compensation court to determine the effectiveness of the plan;

15 (h) Authorizes employees to receive medical, surgical,
16 and hospital services from a physician who is not a member of the
17 managed care plan if such physician has been selected by the
18 employee pursuant to subsection (2) of section 48-120 and if such
19 physician agrees to refer the employee to the managed care plan for
20 any other treatment that the employee may require and agrees to
21 comply with all the rules, terms, and conditions of the managed
22 care plan;

23 (i) Authorizes necessary emergency medical treatment for
24 an injury which is provided by a provider of medical, surgical, and
25 hospital services who is not a part of the managed care plan;

26 (j) Does not discriminate against or exclude from
27 participation in the plan any category of providers of medical,

1 surgical, or hospital services and includes an adequate number of
2 each category of providers of medical, surgical, and hospital
3 services to give employees convenient geographic accessibility to
4 all categories of providers and adequate flexibility to choose a
5 physician to provide medical, surgical, and hospital services from
6 among those who provide services under the plan;

7 (k) Provides an employee the right to change the
8 physician initially selected to provide medical, surgical, and
9 hospital services under the plan at least once; and

10 (1) Complies with any other requirement the compensation
11 court determines is necessary to provide quality medical, surgical,
12 and hospital services to injured employees.

13 The compensation court may accept findings, licenses,
14 certifications, or registrations of other state agencies as
15 satisfactory evidence of compliance with a particular requirement
16 of this subsection.

17 (3) An employee shall exhaust the dispute resolution
18 procedure of the certified managed care plan prior to filing a
19 petition or otherwise seeking relief from the compensation court on
20 an issue related to managed care. If an employee has exhausted the
21 dispute resolution procedure of the managed care plan, the employee
22 may seek a medical finding by an independent medical examiner
23 pursuant to section 48-134.01. No petition may be filed with the
24 compensation court pursuant to section 48-173 solely on the issue
25 of the reasonableness and necessity of medical treatment unless a
26 medical finding on such issue has been rendered by an independent
27 medical examiner pursuant to section 48-134.01. If the

1 compensation court subsequently orders reasonable medical services
2 previously refused to be furnished to the employee by a physician
3 who is a member of the managed care plan, the compensation court
4 shall allow the employee to select another physician to furnish
5 further medical services if the physician so selected complies with
6 all rules, terms, and conditions of the managed care plan and
7 refers the employee to the managed care plan for any other
8 treatment that the employee may require.

9 (4) The compensation court may refuse to certify ~~or may a~~
10 managed care plan or a three-judge panel of the compensation court
11 may, after notice and hearing, revoke or suspend the certification
12 of a managed care plan that unfairly restricts direct access within
13 the managed care plan to any category of provider of medical,
14 surgical, or hospital services. Direct access within the managed
15 care plan is unfairly restricted if direct access is denied and the
16 treatment or service sought is within the scope of practice of the
17 profession to which direct access is sought and is appropriate
18 under the standards of treatment adopted by the managed care plan
19 or, in instances where the compensation court has adopted standards
20 of treatment, the standards adopted by the compensation court.

21 (5) The compensation court may refuse to certify ~~or may~~
22 ~~revoke or suspend the certification of~~ a managed care plan if the
23 compensation court finds that the plan for providing medical,
24 surgical, and hospital services fails to meet the requirements of
25 this section. A three-judge panel of the compensation court may,
26 after notice and hearing, revoke or suspend the certification of a
27 managed care plan if the panel finds that the plan fails to meet

1 the requirements of this section or that ~~ex~~ service under the plan
2 is not being provided in accordance with the terms of a certified
3 plan.

4 (6) The Attorney General, when requested by the
5 administrator of the compensation court, may file a motion pursuant
6 to section 48-162.03 for an order directing a certified managed
7 care plan to appear before a three-judge panel of the compensation
8 court and show cause as to why the panel should not revoke or
9 suspend certification of the plan pursuant to subsection (4) or (5)
10 of this section. The Attorney General shall be considered a party
11 for purposes of such motion. The Attorney General may appear
12 before the three-judge panel and present evidence that the managed
13 care plan unfairly restricts direct access within the plan, that
14 the plan fails to meet the requirements of this section, or that
15 service under the plan is not being provided in accordance with the
16 terms of a certified plan. The presiding judge shall rule on a
17 motion of the Attorney General pursuant to this subsection and, if
18 applicable, shall appoint judges of the compensation court to serve
19 on the three-judge panel. The presiding judge shall not serve on
20 such panel. Appeal from a suspension or revocation pursuant to
21 subsection (4) or (5) of this section shall be in accordance with
22 section 48-185. No such appeal shall operate as a supersedeas.

23 (7) The compensation court may adopt and promulgate rules
24 and regulations necessary to implement this section.

25 Sec. 8. Section 48-145, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 48-145. To secure the payment of compensation under the

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 Nebraska Workers' Compensation Act:

2 (1) Every employer in the occupations described in
3 section 48-106, except the State of Nebraska and any governmental
4 agency created by the state, shall either (a) insure and keep
5 insured its liability under such act in some corporation,
6 association, or organization authorized and licensed to transact
7 the business of workers' compensation insurance in this state, (b)
8 in the case of an employer who is a lessor of one or more
9 commercial vehicles leased to a self-insured motor carrier, be a
10 party to an effective agreement with the self-insured motor carrier
11 under section 48-115.02, (c) be a member of a risk management pool
12 authorized and providing group self-insurance of workers'
13 compensation liability pursuant to the Intergovernmental Risk
14 Management Act, or (d) with approval of the Nebraska Workers'
15 Compensation Court, self-insure its workers' compensation
16 liability.

17 An employer seeking approval to self-insure shall make
18 application to the compensation court in the form and manner as the
19 compensation court may prescribe, meet such minimum standards as
20 the compensation court shall adopt and promulgate by rule and
21 regulation, and furnish to the compensation court satisfactory
22 proof of financial ability to pay direct the compensation in the
23 amount and manner when due as provided for in the Nebraska Workers'
24 Compensation Act. Approval is valid for the period prescribed by
25 the compensation court unless earlier revoked pursuant to this
26 subdivision or subsection (1) of section 48-146.02. The
27 compensation court may by rule and regulation require the deposit

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 of an acceptable security, indemnity, trust, or bond to secure the
2 payment of compensation liabilities as they are incurred. The
3 agreement or document creating a trust for use under this section
4 shall contain a provision that the trust may only be terminated
5 upon the consent and approval of the compensation court. Any
6 beneficial interest in the trust principal shall be only for the
7 benefit of the past or present employees of the self-insurer and
8 any persons to whom the self-insurer has agreed to pay benefits
9 under subdivision (11) of section 48-115 and section 48-115.02.
10 Any limitation on the termination of a trust and all other
11 restrictions on the ownership or transfer of beneficial interest in
12 the trust assets contained in such agreement or document creating
13 the trust shall be enforceable, except that any limitation or
14 restriction shall be enforceable only if authorized and approved by
15 the compensation court and specifically delineated in the agreement
16 or document.

17 Notwithstanding any other provision of the Nebraska
18 Workers' Compensation Act, a three-judge panel of the compensation
19 court may, after notice and hearing, ~~suspend or~~ revoke approval as
20 a self-insurer if it finds that the financial condition of the
21 self-insurer or the failure of the self-insurer to comply with an
22 obligation under the act poses a serious threat to the public
23 health, safety, or welfare. The Attorney General, when requested
24 by the administrator of the compensation court, may file a motion
25 pursuant to section 48-162.03 for an order directing a self-insurer
26 to appear before a three-judge panel of the compensation court and
27 show cause as to why the panel should not revoke approval as a

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 self-insurer pursuant to this subdivision. The Attorney General
2 shall be considered a party for purposes of such motion. The
3 Attorney General may appear before the three-judge panel and
4 present evidence that the financial condition of the self-insurer
5 or the failure of the self-insurer to comply with an obligation
6 under the act poses a serious threat to the public health, safety,
7 or welfare. The presiding judge shall rule on a motion of the
8 Attorney General pursuant to this subdivision and, if applicable,
9 shall appoint judges of the compensation court to serve on the
10 three-judge panel. The presiding judge shall not serve on such
11 panel. Appeal from ~~such suspension or revocation~~ a revocation
12 pursuant to this subdivision shall be in accordance with section
13 48-185. No such appeal shall operate as a supersedeas unless the
14 self-insurer executes to the compensation court a bond with one or
15 more sureties authorized to do business within the State of
16 Nebraska in an amount determined by the three-judge panel to be
17 sufficient to satisfy the obligations of the self-insurer under the
18 act;

19 (2) An approved self-insurer shall furnish to the State
20 Treasurer an annual amount equal to two and one-half percent of the
21 prospective loss costs for like employment but in no event less
22 than twenty-five dollars. Prospective loss costs is defined in
23 section 48-151. The compensation court is the sole judge as to the
24 prospective loss costs that shall be used. All money which a
25 self-insurer is required to pay to the State Treasurer, under this
26 subdivision, shall be computed and tabulated under oath as of
27 January 1 and paid to the State Treasurer immediately thereafter.

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 ~~The Nebraska Workers' Compensation Court, any judge thereof, or any~~
2 ~~representative of the compensation court is empowered to audit any~~
3 ~~such payroll at its discretion. The compensation court or designee~~
4 ~~of the compensation court may audit the payroll of a self-insurer~~
5 ~~at its discretion.~~ All money paid by a self-insurer under this
6 subdivision shall be credited to the General Fund; and

7 (3) Every employer who fails, neglects, or refuses to
8 comply with the conditions set forth in subdivision (1) or (2) of
9 this section shall be required to respond in damages to an employee
10 for personal injuries, or when personal injuries result in the
11 death of an employee, then to his or her dependents.

12 Sec. 9. Section 48-145.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 48-145.01. (1) Any employer required to secure the
15 payment of compensation under the Nebraska Workers' Compensation
16 Act who willfully fails to secure the payment of such compensation
17 shall be guilty of a Class I misdemeanor. If the employer is a
18 corporation, limited liability company, or limited liability
19 partnership any officer, member, manager, partner, or employee ~~of~~
20 ~~the corporation~~ who had authority to secure payment of compensation
21 on behalf of the ~~corporation~~ employer and willfully failed to do so
22 shall be individually guilty of a Class I misdemeanor and ~~such~~
23 ~~officer or employee~~ shall be personally liable jointly and
24 severally with such ~~corporation~~ employer for any compensation which
25 may accrue under the act in respect to any injury which may occur
26 to any employee of such ~~corporation~~ employer while it so fails to
27 secure the payment of compensation as required by section 48-145.

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 If the employer is a limited liability company, any member or
2 manager of the company who had authority to secure payment of
3 compensation on behalf of the company and willfully failed to do so
4 shall be individually guilty of a Class I misdemeanor and such
5 member or manager shall be personally liable jointly and severally
6 with such company for any compensation which may accrue under the
7 act in respect to any injury which may occur to any employee of
8 such company while it so fails to secure the payment of
9 compensation as required by section 48-145.

10 (2) If an employer who is subject to the Nebraska
11 Workers' Compensation Act fails to secure the payment of
12 compensation as required by section 48-145, ~~he or she~~ the employer
13 may be enjoined from doing business in this state until ~~he or she~~
14 the employer complies with subdivision (1) of section 48-145. If a
15 temporary injunction is granted at the request of the State of
16 Nebraska, no bond shall be required to make the injunction
17 effective. The Nebraska Workers' Compensation Court or the
18 district court may order ~~such employer~~ an employer who willfully
19 fails to secure the payment of compensation to pay a monetary
20 penalty of not more than one thousand dollars for each violation.
21 For purposes of this subsection, each day of continued failure to
22 secure the payment of compensation as required by section 48-145
23 constitutes a separate violation. If the employer is a
24 corporation, limited liability company, or limited liability
25 partnership, any officer, member, manager, partner, or employee who
26 had authority to secure payment of compensation on behalf of the
27 employer and willfully failed to do so shall be personally liable

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 jointly and severally with the employer for such monetary penalty.
2 All penalties collected pursuant to this subsection shall be
3 remitted to the State Treasurer for ~~credit to the permanent school~~
4 ~~fund.~~ distribution in accordance with Article VII, section 5, of
5 the Constitution of Nebraska.

6 (3) It shall be the duty of the Attorney General to act
7 as attorney for the State of Nebraska for purposes of this section.
8 The Attorney General may file a motion pursuant to section
9 48-162.03 for an order directing an employer to appear before a
10 judge of the compensation court and show cause as to why a monetary
11 penalty should not be assessed against the employer pursuant to
12 subsection (2) of this section. The Attorney General shall be
13 considered a party for purposes of such motion. The Attorney
14 General may appear before the compensation court and present
15 evidence of a violation or violations pursuant to subsection (2) of
16 this section and the identity of the person who had authority to
17 secure the payment of compensation. Appeal from an order of a
18 judge of the compensation court pursuant to subsection (2) of this
19 section shall be in accordance with section 48-179.

20 Sec. 12. Section 48-146.02, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-146.02. (1)(a) If a three-judge panel of the Nebraska
23 Workers' Compensation Court finds, after due notice and hearing at
24 which the workers' compensation insurer is entitled to be heard ~~in~~
25 ~~person or by counsel~~ and present evidence, that such insurer has
26 failed to comply with an obligation under the Nebraska Workers'
27 Compensation Act with such frequency as to indicate a general

1 business practice to engage in that type of conduct, the
2 three-judge panel may request the Director of Insurance to suspend
3 or revoke the authorization of such insurer to write workers'
4 compensation insurance under the provisions of Chapter 44 and such
5 act. Such suspension or revocation shall not affect the liability
6 of any such insurer under policies in force prior to the suspension
7 or revocation.

8 (b) If a three-judge panel of the compensation court
9 finds, after due notice and hearing at which the risk management
10 pool is entitled to be heard ~~in person or by counsel~~ and present
11 evidence, that such pool has failed to comply with an obligation
12 under the Nebraska Workers' Compensation Act, as set out in
13 subsection (1) of section 44-4319, with such frequency as to
14 indicate a general business practice to engage in that type of
15 conduct, the three-judge panel may suspend or revoke the authority
16 of the pool to provide group self-insurance coverage of workers'
17 compensation liability pursuant to the Intergovernmental Risk
18 Management Act. Such suspension or revocation shall not affect the
19 liability of any such risk management pool under the terms of the
20 agreement forming the pool in force prior to the suspension or
21 revocation.

22 (c) If a three-judge panel of the compensation court
23 finds, after due notice and hearing at which the self-insurer is
24 entitled to be heard ~~in person or by counsel~~ and present evidence,
25 that such self-insurer has failed to comply with an obligation
26 under the Nebraska Workers' Compensation Act with such frequency as
27 to indicate a general business practice to engage in that type of

1 conduct, the three-judge panel may ~~suspend or~~ revoke the approval
2 of such self-insurer to provide self-insurance coverage of workers'
3 compensation liability pursuant to section 48-145. Such ~~suspension~~
4 ~~or~~ revocation shall not affect the liability of any such
5 self-insurer under an approval by the compensation court to
6 self-insure in force prior to the ~~suspension or~~ revocation.

7 (d) The Attorney General, when requested by the
8 administrator of the compensation court, may file a motion pursuant
9 to section 48-162.03 for an order directing a workers' compensation
10 insurer, risk management pool, or self-insurer to appear before a
11 three-judge panel of the compensation court and show cause as to
12 why the panel should not take action pursuant to this subsection.
13 The Attorney General shall be considered a party for purposes of
14 such motion. The Attorney General may appear before the
15 three-judge panel and present evidence that the workers'
16 compensation insurer, risk management pool, or self-insurer has
17 failed to comply with an obligation under the Nebraska Workers'
18 Compensation Act with such frequency as to indicate a general
19 business practice to engage in that type of conduct. The presiding
20 judge shall rule on a motion of the Attorney General pursuant to
21 this subdivision and, if applicable, shall appoint judges of the
22 compensation court to serve on the three-judge panel. The
23 presiding judge shall not serve on such panel.

24 (e) Appeal from an action by a three-judge panel of the
25 compensation court pursuant to subdivision (1)(b) or (1)(c) of this
26 section shall be in accordance with section 48-185.

27 (2) In addition to any other obligations under the

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 Nebraska Workers' Compensation Act, the following acts or
2 practices, when committed with such frequency as to indicate a
3 general business practice to engage in that type of conduct, shall
4 subject the workers' compensation insurer, risk management pool, or
5 self-insurer to action pursuant to subsection (1) of this section:

6 (a) Knowingly misrepresenting relevant facts or the
7 provisions of the ~~Nebraska Workers' Compensation Act~~ act or any
8 rule or regulation adopted pursuant to such act;

9 (b) Failing to acknowledge with reasonable promptness
10 pertinent communications with respect to claims arising under the
11 act;

12 (c) Failing to promptly investigate claims arising under
13 the act;

14 (d) Not attempting in good faith to effectuate prompt,
15 fair, and equitable payment of benefits when compensability has
16 become reasonably clear;

17 (e) Refusing to pay benefits without conducting a
18 reasonable investigation;

19 (f) Failing to affirm or deny compensability of a claim
20 within a reasonable time after having completed the investigation
21 related to such claim;

22 (g) Paying substantially less than amounts owed under the
23 act where there is no reasonable controversy;

24 (h) Making payment to an injured employee, beneficiary of
25 a deceased employee, or provider of medical, surgical, or hospital
26 services without providing a reasonable and accurate explanation of
27 the basis for the payment;

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 (i) Unreasonably delaying the investigation or payment of
2 benefits by knowingly requiring excessive verification or
3 duplication of information;

4 (j) Failing, in the case of the denial of compensability
5 or the denial, change in, or termination of benefits, to promptly
6 provide a reasonable and accurate explanation of the basis for such
7 action to the injured employee or beneficiary of a deceased
8 employee;

9 (k) Failing, in the case of the denial of payment for
10 medical, surgical, or hospital services, to promptly provide a
11 reasonable and accurate explanation of the basis for such action to
12 the provider of such services; or

13 (l) Failing to provide the compensation court's address
14 and telephone number to an injured employee or beneficiary of a
15 deceased employee with instructions to contact the court for
16 further information:

17 (i) At or near the time the workers' compensation
18 insurer, risk management pool, or self-insurer receives notice or
19 has knowledge of the injury; and

20 (ii) At or near the time of the denial of compensability
21 or the denial, change in, or termination of benefits.

22 (3) In order to determine compliance with obligations
23 under the Nebraska Workers' Compensation Act, the compensation
24 court or its designee may examine the workers' compensation records
25 of (a) a workers' compensation insurer, a risk management pool, or
26 a self-insurer or (b) an adjuster, a third-party administrator, or
27 other agent acting on behalf of such workers' compensation insurer,

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 risk management pool, or self-insurer. The authority of the
2 compensation court pursuant to this subsection is subject to the
3 limitations provided under the work-product doctrine and
4 attorney-client privilege as recognized in Nebraska law.

5 (4) The compensation court may adopt and promulgate rules
6 and regulations necessary to implement this section.

7 Sec. 13. Section 48-152, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 48-152. Recognizing that (1) industrial relations
10 between employers and employees within the State of Nebraska are
11 affected with a vital public interest, (2) an impartial and
12 efficient administration of the Nebraska Workers' Compensation Act
13 is essential to the prosperity and well-being of the state, and (3)
14 suitable laws should be enacted for the establishing and for the
15 preservation of such an administration of the Nebraska Workers'
16 Compensation Act, there is hereby created, pursuant to the
17 provisions of Article V, section 1, of the Nebraska Constitution, a
18 court, consisting of seven judges, to be selected or retained in
19 office in accordance with the provisions of Article V, section 21,
20 of the Nebraska Constitution and to be known as the Nebraska
21 Workers' Compensation Court, which court shall have authority to
22 administer and enforce all of the provisions of the Nebraska
23 Workers' Compensation Act, and any amendments thereof, except such
24 as are committed to the courts of appellate jurisdiction or as
25 otherwise provided by law.

26 Sec. 19. Section 48-162.01, Reissue Revised Statutes of
27 Nebraska, is amended to read:

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 48-162.01. (1) One of the primary purposes of the
2 Nebraska Workers' Compensation Act is restoration of the injured
3 employee to gainful employment. To this end the Nebraska Workers'
4 Compensation Court may employ one or more specialists in ~~physical,~~
5 ~~medical,~~ ~~or~~ vocational rehabilitation. ~~to be appointed by the~~
6 ~~presiding judge.~~ Salaries, other benefits, and administrative
7 expenses incurred by the compensation court for purposes of
8 vocational rehabilitation shall be paid from the Compensation Court
9 Cash Fund.

10 (2) ~~Such~~ Vocational rehabilitation specialists employed
11 by the court shall continuously study the problems of vocational
12 rehabilitation, ~~both physical and vocational,~~ and shall ~~investigate~~
13 ~~and~~ maintain a directory of ~~rehabilitation facilities and~~
14 individual service providers, counselors, and specialists which
15 have been approved by the Nebraska Workers' Compensation Court.
16 The compensation court may approve as qualified such ~~facilities,~~
17 ~~institutions,~~ ~~physicians,~~ and ~~other~~ individual service providers,
18 counselors, and specialists as are capable of rendering competent
19 vocational rehabilitation ~~service to seriously~~ services to injured
20 employees. ~~No facility or institution shall be considered as~~
21 ~~qualified unless it is specifically equipped to provide~~
22 ~~rehabilitation services for persons suffering from either some~~
23 ~~specialized type of disability or some general type of disability~~
24 ~~within the field of occupational injury and is staffed with trained~~
25 ~~and qualified personnel and, with respect to physical~~
26 ~~rehabilitation, unless it is supervised by a physician qualified to~~
27 ~~render such service.~~ ~~No physician shall be considered qualified~~

1 ~~unless he or she has had the experience and training specified by~~
2 ~~the compensation court.~~ No individual service provider, counselor,
3 or specialist shall be considered qualified to provide vocational
4 rehabilitation services to injured employees unless he or she has
5 satisfied the standards for certification established by the
6 compensation court and has been certified by the compensation
7 court.

8 (3) ~~An employee who has suffered an injury covered by the~~
9 ~~Nebraska Workers' Compensation Act is entitled to prompt medical~~
10 ~~and physical rehabilitation services.~~ When as a result of the
11 injury an employee is unable to perform suitable work for which he
12 or she has previous training or experience, he or she is entitled
13 to such vocational rehabilitation services, including job placement
14 and ~~retraining~~ training, as may be reasonably necessary to restore
15 him or her to suitable employment. Vocational rehabilitation
16 training costs shall be paid from the Workers' Compensation Trust
17 Fund. When vocational rehabilitation training requires residence
18 at or near a facility or institution away from the employee's
19 customary residence, whether within or without this state, the
20 reasonable costs of his or her board, lodging, and travel shall be
21 paid from the Workers' Compensation Trust Fund.

22 If entitlement to vocational rehabilitation services is
23 claimed by the employee, the employee and the employer or his or
24 her insurer shall attempt to agree on the choice of a vocational
25 rehabilitation counselor from the directory of vocational
26 rehabilitation counselors established pursuant to subsection (2) of
27 this section. If they are unable to agree on a vocational

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 rehabilitation counselor, the employee or employer or his or her
2 insurer shall notify the compensation court, and a vocational
3 rehabilitation specialist of the compensation court shall select a
4 counselor from the directory of vocational rehabilitation
5 counselors established pursuant to subsection (2) of this section.
6 Only one such vocational rehabilitation counselor may provide
7 vocational rehabilitation services at any one time, and any change
8 in the choice of a vocational rehabilitation counselor shall be
9 approved by a vocational rehabilitation specialist or judge of the
10 compensation court. The vocational rehabilitation counselor so
11 chosen or selected shall evaluate the employee and, if necessary,
12 develop and implement a vocational rehabilitation plan. Any such
13 plan shall be evaluated by a vocational rehabilitation specialist
14 of the compensation court and approved by such specialist or a
15 judge of the compensation court prior to implementation. In
16 evaluating a plan the specialist shall make an independent
17 determination as to whether the proposed plan is likely to result
18 in suitable employment for the injured employee that is consistent
19 with the priorities listed in this subsection. It is a rebuttable
20 presumption that any vocational rehabilitation plan developed by
21 such vocational rehabilitation counselor and approved by a
22 vocational rehabilitation specialist of the compensation court is
23 an appropriate form of vocational rehabilitation. The fee for the
24 evaluation and for the development and implementation of the
25 vocational rehabilitation plan shall be paid by the employer or his
26 or her workers' compensation insurer. The compensation court may
27 establish a fee schedule for services rendered by a vocational

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 rehabilitation counselor. Any loss-of-earning-power evaluation
2 performed by a vocational rehabilitation counselor shall be
3 performed by a counselor from the directory established pursuant to
4 subsection (2) of this section and chosen or selected according to
5 the procedures described in this subsection. It is a rebuttable
6 presumption that any opinion expressed as the result of such a
7 loss-of-earning-power evaluation is correct.

8 The following priorities shall be used in developing and
9 evaluating a vocational rehabilitation plan. No higher priority
10 may be utilized unless all lower priorities have been determined by
11 the vocational rehabilitation counselor and a vocational
12 rehabilitation specialist or judge of the compensation court to be
13 unlikely to result in a ~~job placement~~ suitable employment for the
14 injured employee that is consistent with the priorities listed in
15 this ~~section~~ subsection. If a lower priority is clearly
16 inappropriate for the employee, the next higher priority shall be
17 utilized. The priorities are, listed in order from lower to higher
18 priority:

- 19 (a) Return to the previous job with the same employer;
20 (b) Modification of the previous job with the same
21 employer;
22 (c) A new job with the same employer;
23 (d) A job with a new employer; or
24 (e) A period of formal ~~retraining~~ training which is
25 designed to lead to employment in another career field.

26 ~~Vocational rehabilitation training costs shall be paid~~
27 ~~from the Workers' Compensation Trust Fund.~~

1 (4) The compensation court may cooperate on a reciprocal
2 basis with federal and state agencies for vocational rehabilitation
3 services or with any public or private agency.

4 (5) The Attorney General, when requested by the
5 administrator of the compensation court, may file a motion pursuant
6 to section 48-162.03 regarding any issue related to vocational
7 rehabilitation services or costs pursuant to this section. The
8 Attorney General shall be considered a party for purposes of such
9 motion. The Attorney General may initiate an original action
10 before the compensation court or may intervene in a pending action
11 and become a party to the litigation. Any such motion shall be
12 heard by a judge of the compensation court other than the presiding
13 judge.

14 (6) An employee who has suffered an injury covered by the
15 Nebraska Workers' Compensation Act is entitled to prompt physical
16 and medical rehabilitation services. If physical or medical
17 rehabilitation services are not voluntarily offered and accepted,
18 the ~~Nebraska Workers' Compensation Court~~ compensation court or any
19 judge thereof on its or his or her own motion, or upon application
20 of the employee or employer, and after affording the parties an
21 opportunity to be heard by the compensation court or judge thereof,
22 may refer the employee to a ~~qualified~~ facility, institution,
23 physician, or other individual service provider capable of
24 rendering competent physical or medical rehabilitation services for
25 evaluation and report of the practicability of, need for, and kind
26 of service or treatment necessary and appropriate to render him or
27 her fit for a remunerative occupation, and the costs of such

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 evaluation and report involving physical or medical rehabilitation
2 shall be borne by the employer or his or her workers' compensation
3 insurer. Upon receipt of such report and after affording the
4 parties an opportunity to be heard, the compensation court or judge
5 thereof may order that the physical or medical services and
6 treatment recommended in the report or other necessary physical or
7 medical rehabilitation treatment or service be provided at the
8 expense of the employer or his or her workers' compensation
9 insurer.

10 ~~(5) When physical or medical rehabilitation requires~~
11 ~~residence at or near the facility or institution away from the~~
12 ~~employee's customary residence, whether within or without this~~
13 ~~state, the reasonable costs of his or her board, lodging, and~~
14 ~~travel shall be paid for by the employer or his or her workers'~~
15 ~~compensation insurer in addition to any other benefits payable~~
16 ~~under the Nebraska Workers' Compensation Act, including weekly~~
17 ~~compensation benefits for temporary disability. When vocational~~
18 ~~rehabilitation requires residence at or near the facility or~~
19 ~~institution away from the employee's customary residence, whether~~
20 ~~within or without this state, the reasonable costs of his or her~~
21 ~~board, lodging, and travel shall be paid from the Workers'~~
22 ~~Compensation Trust Fund and weekly compensation benefits for~~
23 ~~temporary disability shall be paid by the employer or his or her~~
24 ~~insurer.~~

25 ~~(6) The Nebraska Workers' Compensation Court may~~
26 ~~cooperate on a reciprocal basis with federal and state agencies for~~
27 ~~vocational education or vocational, physical, or medical~~

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 ~~rehabilitation or with any public or private agency.~~

2 (7) If the injured employee without reasonable cause
3 refuses to undertake or fails to cooperate with ~~the~~ a physical,
4 medical, or vocational rehabilitation, ~~training, or educational~~
5 program determined by the compensation court or judge thereof to be
6 suitable for him or her or refuses to be evaluated under subsection
7 (3) or ~~(4)~~ (6) of this section or fails to cooperate in such
8 evaluation, the compensation court or judge thereof may suspend,
9 reduce, or limit the compensation otherwise payable under the
10 Nebraska Workers' Compensation Act. The compensation court or
11 judge thereof may also modify a previous finding, order, award, or
12 judgment relating to physical, medical, or vocational
13 rehabilitation services as necessary in order to accomplish the
14 goal of restoring the injured employee to gainful and suitable
15 employment, or as otherwise required in the interest of justice.

16 Sec. 30. Section 48-188, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-188. Any order, award, or judgment by the Nebraska
19 Workers' Compensation Court, or any judge thereof, which is
20 certified to by the clerk of the compensation court, or any order,
21 award, or judgment made pursuant to the Nebraska Workers'
22 Compensation Act by the Court of Appeals or Supreme Court, which is
23 certified to by the Clerk of the Supreme Court, for compensation
24 pursuant to the Nebraska Workers' Compensation Act may, as soon as
25 the same becomes conclusive upon the parties at interest, be filed
26 with the district court of any county or counties in the State of
27 Nebraska upon the payment of a fee of two dollars to the clerk of

AM1671
LB 13
DCC-05-19

AM1671
LB 13
DCC-05-19

1 the district court or courts where such order, award, or judgment
2 is ~~se~~ filed. Upon filing, such order, award, or judgment shall have
3 the same force and effect as a judgment of such district court or
4 courts and all proceedings in relation thereto shall thereafter be
5 the same as though the order, award, or judgment had been rendered
6 in a suit duly heard and determined by such district court or
7 courts.

8 Sec. 34. Sections 1 to 4, 6 to 30, 32, 33, and 37 of
9 this act become operative three calendar months after the
10 adjournment of this legislative session. The other sections of
11 this act become operative on their effective date.

12 Sec. 37. Original sections 48-118, 48-120.02, 48-121.02,
13 48-144, 48-144.03, 48-145, 48-145.01, 48-145.02, 48-145.04,
14 48-146.02, 48-152, 48-155, 48-157, 48-158, 48-159, 48-162,
15 48-162.01, 48-162.02, 48-163, 48-165, 48-177, 48-188, 48-1,110, and
16 48-1,116, Reissue Revised Statutes of Nebraska, are repealed.".

17 2. Renumber the remaining sections accordingly.